106 FERC ¶ 61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Georgia Power Company Project No. 2413-058

ORDER DENYING REHEARING AND REQUEST FOR STAY

(Issued January 29, 2004)

1. In this order we deny a request for rehearing and stay of an order authorizing Georgia Power Company to erect three non-project transmission line towers in Lake Oconee, the reservoir of Georgia Power's licensed, 321.3-megawatt Wallace Dam Project No. 2413, located in Putnam, Morgan, Oglethorpe, Greene, Oconee, and Hancock Counties, Georgia.[1]

BACKGROUND

2. Pursuant to a 50-year license issued in 1969,[2] Georgia Power built Wallace Dam across the Oconee River, thereby creating Lake Oconee, the project reservoir. The lake has a surface area of about 21,000 acres and extends some 39 miles upstream of the dam. The reservoir is long and thin, with numerous branches and coves and a total of about 374 miles of shoreline. Most of the area surrounding the project is forested, the rest being primarily active or retired farmland and limited areas of development.[3]

3. An estimated 5.8 million people live within a 100-mile radius of the project dam, which is 40 miles from Macon and 76 miles from Atlanta.[4] Project lands and waters are

[1] 105 FERC ¶ 62,022 (2003).

[2] 42 FPC 356 (1969).

[3] See the Environmental Assessment (EA) for the proposed action, attached to the October 9, 2003 Order approving non-project use of project lands and waters, 105 FERC ¶ 62,022 at 64,061.

[4] See Licensed Hydropower Development Recreation Report (FERC Form 80) for Project No. 2413, filed by Georgia Power on March 15, 2003.

heavily used for recreation, including boating, fishing, swimming, camping, picnicking, golf, and sightseeing. The project is easily accessible by public roadways, and public access to the project reservoir is readily available at recreational areas and facilities operated by the U.S. Forest Service, the licensee, and others.[5]

4. On August 21, 2003,[6] Georgia Power applied for authorization to construct segments of a new 6.6-mile-long, non-project,115-kilovolt electric transmission line across branches of Lake Oconee at two locations: the State Highway 44 bridge in Greene and Putnam Counties, and the Old Phoenix Road bridge in Putnam County. At the Highway 44 Bridge, the company proposed to install three concrete support structures on the floor of the reservoir to support three 120-foot-tall transmission line towers whose lines would parallel Highway 44. At the Old Phoenix Road bridge, the transmission line structures would be erected on lands outside the project boundary,[7] and the lines would span the reservoir branch. Georgia Power states that it needs the line in order to serve the increased development in the area.

5. On August 26, 2003, the Commission issued public notice of Georgia Power's application, in response to which it received timely comments and motions to intervene from four individuals, including Lester Reed, and the Lake Oconee Property Owner's Association and Lake Oconee Water Watch (together, Association).[8] The comments expressed concern over the adverse effect of the proposed transmission line on the scenic beauty of the lake, to which Highway 44 bridge is the southern entrance, and over the consequent adverse effect on tourism and the tourism-dependent economies of Greene and Putnam Counties. The Association added that the transmission line may pose a hazard to bald eagles in the area, and asked the Commission to require Georgia Power to submit the estimated cost of submerging the lines.

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[5] EA, 105 FERC ¶ 62,022 at 64,061.

[6] Georgia Power supplemented its application by filings of August 29 and September 22, 2003.

[7] The project boundary is all lands up to contour elevation 438 feet msl, or fifty feet horizontal measurement from normal full pool elevation (435 feet msl), whichever is the greater horizontal distance. See the project license, 42 FPC 356 at 358.

[8] See Motion to Intervene of Janet Pearson on Behalf of Lake Oconee Property Owners' Association and Lake Oconee Water Watch, filed September 10, 2003. The Association has about 400 members owning property on Lake Oconee in Putnam, Greene, and Morgan Counties. Water Watch is an organization that states it has monitored the water quality of Lake Oconee on a monthly basis for over ten years.

6. The Commission staff prepared an Environmental Assessment (EA) of Georgia Power's proposal to locate parts of the non-project transmission line in and over the project reservoir. The EA concluded that approval of the proposal, which would cost about $1 million, would have negligible to minor short-term effects on environmental resources, cause only minor long-term adverse effects on visual quality, and was unlikely to hurt tourism or adversely affect bald eagles.[9] By order issued October 9, 2003, the Commission's Division of Hydropower Administration and Compliance adopted the analysis and recommendations set forth in the EA and approved Georgia Power's application.

7. In his request for rehearing, Mr. Lester Reed contends that the order erred in approving the proposed transmission line without adequate consideration of information concerning the effect of the line upon tourism in the area and of the comments filed by the Association.

DISCUSSION

8. In reviewing requests for non-project uses of project lands and waters, the Commission examines whether, and to what extent, the proposed use will adversely affect any other beneficial use of the project, and if so, whether the benefits of the proposed use outweigh that effect.[10]

9. The EA prepared in this proceeding examined three alternative ways to route the transmission line across the project reservoir at the Highway 44 bridge. The first alternative was to align the transmission line towers along the north side of the Highway 44 bridge, instead of along the south side, as proposed. The EA stated that this alternative would have short-term impacts on aquatic resources similar to Georgia Power's proposal.[11] In both cases, the concrete support structures would be placed by a

[9] EA, 105 FERC ¶ 62,022 at 64,064.

[10] Section 10(a)(1) of the Federal Power Act, 16 U.S.C. § 803(a)(1), requires the Commission to ensure that any hydropower project it licenses will be consistent with the optimal utilization of a waterway, taking into account and balancing all the various developmental and environmental uses, some of which may conflict. The Section 10(a)(1) standard also informs the Commission's actions with respect to a project throughout the term of the license, including its review of requests to use a project's lands and waters for non-project purposes. See Alabama Power Co., 74 FERC ¶ 61,157 at 61,537 (1996).

[11] EA, 105 FERC ¶ 62,022 at 64,063.

crane mounted on a barge, and a series of casings would be used as turbidity barriers and to prevent uncured concrete from entering the reservoir.[12] However, while the north-of-bridge alternative is preferable in that it would have entailed less expense and less visual impact due to a shorter crossing and one less tower, the Georgia Department of Transportation will not grant the licensee permission to use the north side of the bridge, because the state plans to expand the bridge on that side.

10. The second alternative examined by the EA was to lay the transmission line in a submarine cable on the bed of the reservoir for a length of about 2,800 feet. However, while this alternative is largely devoid of permanent visual impacts, it would be five times more costly than the licensee's proposal (i.e., about $5 million), and would pose significantly greater short-term risk of environmental impact, since it would require the removal of submerged tree stumps and any debris located in the path of the cable, and because the cable would be plowed into the lake bed. This alternative could therefore result in large amounts of sediment being released into the water column and transported downstream, to the detriment of fish and benthic organisms. It also could pose safety risks to boaters who may anchor near the cable.[13]

11. The third alternative examined was to install the submarine cable under the lake bed by use of directional drilling. This alternative would also avoid permanent visual impacts and would not entail the environmental and boating impacts of laying the cable over the lake bed, although it does carry the risk of a rupture along the drill route, which would release sediment and other debris into the water column, to the detriment of fish and benthic organisms. However, it would be 2½ times more costly than the licensee's proposal (i.e., about $2.5 million) and would require the licensee to obtain the use of additional land to accommodate the drilling equipment.[14]

12. The EA thus undertook an analysis of the costs and benefits of the alternatives, as sought by the Association. The EA concluded that all three transmission line placement alternatives would have negligible to minor short-term adverse impacts, and minor long-term impacts, on environmental resources and on other beneficial uses of project lands and waters.[15] The EA also determined that Georgia Power's proposal would cost only one-fifth and two-fifths, respectively, of the submersion alternatives.[16]

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[12] Id. at 64,062.

[13] EA, 105 FERC ¶ 62,022 at 64,062-63.

[14] Id. at 64,063.

[15] Id. at 64,064.

[16] Id. at 64,063-64.

13. Mr. Reed and the Association also suggest that stringing the new transmission line segment above the reservoir might present a hazard to migratory birds and eagles. The EA addressed this issue. It noted that, of the four known bald eagle nesting territories on Lake Oconee, the two closest nests are some two miles and 3.5 miles from the Highway 44 crossing.[17] Commission staff initiated informal Section 7 consultation with the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act, and FWS concurred in staff's determination that there are no active eagle nests at the project, and that with the raptor-safe methods and visibility markings proposed in Georgia Power's application, the line would not be likely to adversely affect bald eagles.[18]

14. This brings us to Mr. Reed's primary assertion: that the transmission line would detract from the scenic beauty of Lake Oconee and would discourage tourists from enjoying the area.

15. The EA also addressed this issue. It noted that the reservoir's western shore near the bridge is dominated by housing subdivisions and landscaped properties; the eastern shore near the bridge is more wooded, although there is development along the shoreline.[19] The EA stated that the transmission line crossings as proposed by Georgia Power would be visible to boaters, hikers, and motorists at the bridge crossings, and might be visible from some of the homes in the vicinity, but would not preclude any recreational uses.[20] The EA continued:

> The transmission line route follows Highway 44 and will parallel the Highway 44 Bridge. Because of the presence of the bridge and the Highway, Commission staff does not consider the proposed transmission line out of character with the surrounding environment. The transmission line should not have any significant impacts on tourism around Lake Oconee and therefore, would not significantly affect persons dependent on the tourism industry.[21]

16. Mr. Reed takes exception to this conclusion, and asserts that the Director ignored the Association's opinion that the line's overhead water crossings would have a negative

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[17] Id. at 64,061.

[18] Id. at 64,062.

[19] Id. at 64,061.

[20] Id. at 64,063.

[21] Id.

effect on tourism. However, while the Association and other commenters described the economic importance of tourism to Greene and Putnam Counties, they provided nothing to support their assertion that the overhead line would adversely affect tourism, other than to assert that, as Mr. Reed puts it, "[t]ourists are drawn to Lake Oconee because of its natural beauty and the unspoiled landscape."[22]

17. In view of the highway, the bridge, the nearby residences, and the various commercial establishments up and down Highway 44 that serve many of the tens of thousands of tourists entering the area each year, we agree with the EA's conclusion that the transmission line is not out of character with the surrounding environment. It is not unusual for the approach to a popular scenic tourism and recreation destination to be flanked by such development, to no demonstrable effect on the destination's popularity.

18. We conclude that the Director's decision to approve Georgia Power's overhead transmission line proposal, based on his determination that the aesthetic benefits of the underwater alternatives did not outweigh their significantly higher costs, was supported by substantial evidence,[23] and we affirm the decision.

19. Mr. Reed requested a stay of the October 9, 2003 Order approving Georgia Power's application pending the conclusion of the appeals process. The request is moot with respect to the rehearing process, and we will not stay the order pending any judicial appeal that may be filed.

The Commission orders:

(A) Mr. Lester Reed's October 30, 2003 request for rehearing of the October 9, 2003 Order in this proceeding is denied.

(B) Mr. Lester Reed's October 31, 2003 request for a stay of the October 9, 2003 Order in this proceeding is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[22] Rehearing request at 1.

[23] The FPA's substantial evidence test has been described as the application of the "arbitrary and capricious" standard to factual findings. See, e.g., Friends of the Ompompanoosuc v. FERC, 968 F.2d 1549, 1554 (2d Cir. 1992).